

(g) Liabilities related to any obligations under Section 4980B of the Internal Revenue Code to provide continuation of group medical coverage on and after the Early Funding Date with respect to any employee or former employee employed in connection with the Business or other qualified beneficiary but only to the extent Buyer may be required to assume any such Liability by Law

2.4 Excluded Liabilities Buyer shall not assume, and shall not be deemed to have assumed, any Liabilities of Sellers and Sellers shall be solely and exclusively liable and shall indemnify and hold harmless Buyer and its Affiliates with respect to all Liabilities of Sellers other than the Assumed Liabilities including those Liabilities set forth below (collectively, the "Excluded Liabilities")

(a) Any Liabilities which arise whether before, on or after the Closing, out of, or in connection with, the Excluded Assets, including any Contract which is not an Assumed Contract.

(b) Any Liabilities under the Assumed Contracts or accounts payable to the extent not assumed pursuant to Section 2.3,

(c) Any Liabilities arising from a breach of an Assumed Contract to the extent that the event or state of facts giving rise to such Liability occurs prior to the Early Funding Date,

(d) Any Liabilities arising out of, or in connection with, any pending or threatened Litigation arising out of the operation of the Business to the extent that the event or state of facts giving rise to such Liability occurs prior to the Early Funding Date,

(e) Any Liabilities arising out of or in connection with any indebtedness of Sellers or any of their respective Affiliates to their lenders, noteholders or otherwise (other than, to the extent provided in Section 2.3, post-petition Liabilities relating to Assumed Contracts which are characterized as capital leases by Sellers),

(f) Any Liabilities for which Sellers have received an invoice which is not taken into account in the determination of Early Funding Date Working Capital,

(g) Liabilities related to Shared Technologies or the Shared Hosting Business,

(h) Liabilities related to the Owned Real Property,

(i) Any Liabilities of Sellers or any Affiliate thereof (or any predecessor thereto) relating to Taxes (other than Transfer Taxes referred to in Section 2.3(d) and Taxes described on Exhibit K), including all Taxes attributable to or incurred in any period (or portion thereof) ending on or before the Early Funding Date;

(j) All Liabilities of any Seller, any of their Affiliates or any predecessor of any Seller resulting from, caused by or arising out of, directly or

indirectly, the conduct of the Business or any Sellers' or any of their Affiliates ownership, operation or lease of any properties or assets or any properties or assets previously used in the Business by any Seller, any of their Affiliates or any predecessor of any Seller or any of their Affiliates at any time prior to the Early Funding Date, that constitute, may constitute or are alleged to constitute a violation of or Liability arising under any Environmental Law or other Law including any state or federal communications law or regulation.

(k) All Liabilities arising from or relating to the employment, or *termination of employment*, of any Employee, former Employee, independent contractor or contingent worker with respect to the Business, including pursuant to Employee Benefit Plans, other than those specifically assumed pursuant to Section 2.3 and 6.8 herein and

(l) All Liabilities arising from or relating to any collective bargaining agreement, including any obligation for benefits to employees covered thereunder and, specifically, any Multiemployer Plan liability

2.5 Non-Transferred Assets Notwithstanding the foregoing provisions of Article II, and subject to Section 6.2 and the Operating Agreement, the parties agree that, to the extent that as of the Closing (i) certain of the Acquired Assets cannot be transferred to Buyer pending the issuance of further FCC Consents or State PUC Consents or (ii) certain of the Acquired Assets are associated with one or more interconnection agreements, for which the ILEC's consent is required and which are reasonably necessary, in Buyer's sole discretion, to the operation of the Acquired Assets ("Required Interconnection Agreements") and receipt of any ILEC consents or expiration of any notice periods necessary to assign such Required Interconnection Agreements remains pending as of the Closing, Sellers shall retain such assets (the "Non-Transferred Assets") pending receipt of such consents or expiration of such notice periods. For the avoidance of doubt, Buyer shall have the right, in its sole discretion, to designate any Acquired Asset (including any Required Interconnection Agreement) as a Non-Transferred Asset. During the period that the Non-Transferred Assets are held by Sellers, Buyer will provide management services to Sellers pursuant to the Operating Agreement. Upon receipt from time to time of any such necessary consents, such Non-Transferred Assets as are subject to such consents shall be transferred to Buyer and Buyer will assume all related Assumed Liabilities, and within five (5) Business Days of Buyer's written request, Sellers will deliver a bill of sale and the requirements of Section 3.1 below shall have been deemed to be satisfied as if such Non-Transferred Assets and related Assumed Liabilities had otherwise been transferred to and assumed by Buyer at the Closing. With respect to assets that are designated by Buyer as Non-Transferred Assets and which are not subject to obtaining any further consents after the Closing, such Non-Transferred Assets shall be transferred to Buyer and Buyer will assume all related Assumed Liabilities, within five (5) Business Days of Buyer's written request, at which time Sellers will deliver a bill of sale and the requirements of Section 3.1 below shall have been deemed to be satisfied as if such Non-Transferred Assets had otherwise been transferred to Buyer at the Closing. In addition, Non-Transferred Assets shall include all of the Seller Marks, which shall be licensed to Buyer upon the Closing as set forth in the

Operating Agreement. After the expiration or termination of the Operating Agreement, upon the written request of Buyer, all right, title and interest in and to the Seller Marks shall be transferred to and vest in Buyer.

2.6 Contract Assignment. Notwithstanding any provision to the contrary herein, Buyer and Sellers agree that there shall be excluded from the Acquired Assets any Assumed Contract that is not assignable or transferable pursuant to the Bankruptcy Code without the consent of any Person other than Sellers or any Affiliate of Sellers, to the extent that such consent shall not have been given on or prior to the Closing, provided, however, that Sellers shall use commercially reasonable efforts (including prosecution of appropriate motions pursuant to Section 365 of the Bankruptcy Code) to endeavor to obtain all necessary consents to the assignment thereof, and, upon obtaining the requisite consents thereto, such Acquired Asset shall be assigned to Buyer. Notwithstanding any provision to the contrary herein, Buyer and Sellers agree that all reasonable out-of-pocket costs and expenses (other than Cure Amounts) incurred relating to Sellers' assignment to Buyer of the Assumed Contracts set forth on Schedule 2.6 of the Disclosure Schedules shall be shared equally between Buyer on the one hand and Sellers on the other hand.

2.7 Alternative Structure. Notwithstanding Section 2.1, after the Sale Order Approval Date, Buyer shall have the right, on at least fifteen (15) Business Days notice to ATL, to require Sellers to transfer immediately prior to the Closing, some or all of the Equipment or other Acquired Assets to one or more newly formed Delaware limited liability companies to be formed and owned by one or more Sellers. If Buyer gives such notice, the membership interests in such limited liability companies shall be deemed Acquired Assets hereunder and Buyer shall acquire such membership interests at the Closing without the payment of any additional consideration. Buyer shall be permitted to give one or more notices pursuant to this Section 2.7. In addition, at Buyer's option, a similar procedure will apply to any Equipment or other Acquired Assets which constitutes a Non-Transferred Asset. Fifty percent (50%) of all reasonable out-of-pocket costs and expenses incurred in connection with Sellers' performance of this Section 2.7 shall be borne by each of Buyer on the one hand and Sellers on the other hand.

### ARTICLE III CLOSING

#### 3.1 Closing, Transfer of Possession, Certain Deliveries.

(a) Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Article VIII hereof, the closing of the transactions contemplated herein (the "Closing") shall take place no later than the fifth (5th) Business Day following the date on which the conditions set forth in Article VII have been satisfied or waived (other than those conditions with respect to actions of the parties to be taken at the Closing itself, but subject to the satisfaction or waiver of such conditions), or on such other date as the parties hereto shall mutually agree; provided, however, that if the Closing would be scheduled to occur less than two (2) Business Days after the receipt of the performance

reports for the prior month referred to in Section 6.5(d) hereof. Buyer shall not be required to close until two (2) Business Days after its receipt of such performance reports. The Closing shall be held at the offices of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York 10022, at 5:00 p.m. local time, unless the parties hereto otherwise agree. The actual time and date of the Closing are herein called the "Closing Date."

(b) At the Closing, Sellers shall deliver to Buyer:

- (i) A duly executed bill of sale substantially in the form attached hereto as Exhibit D
- (ii) A certified copy of the Sale Order.
- (iii) The officer's certificate required to be delivered pursuant to Section 7.2(c) hereof.
- (iv) Assignments of lease and customary title affidavits,
- (v) A certification of non-foreign status for each Seller in the form required under Treasury Regulation Section 1.1445-2(b), and
- (vi) All other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer and Sellers, as may be necessary to convey the Acquired Assets to Buyer or Buyer's designee.

(c) At the Closing, Buyer and Sellers shall take the actions specified in Section 3.2(c) and Buyer shall deliver to ATI (on behalf of Sellers):

- (i) All certificates required by all relevant taxing authorities that are necessary to support any available exemption from the imposition of Transfer Taxes,
- (ii) Certified resolutions of the Board of Directors of Buyer authorizing the execution, delivery and performance of the Transaction Documents and the transactions contemplated by this Agreement,
- (iii) To the extent shareholder approval is required, certified resolutions of shareholders of Buyer authorizing the execution, delivery and performance of the Transaction Documents and the transactions contemplated by this Agreement,
- (iv) The officer's certificate required to be delivered pursuant to Section 7.3(c), and
- (v) An assumption agreement substantially in the form attached hereto as Exhibit E

(d) Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Article VIII hereof, no later than the fifth (5th) Business Day following the date on which the conditions set forth in Sections 7.1, 7.2 and 7.3 have been satisfied or waived, or at such other date as the parties hereto shall mutually agree (the "Early Funding Date"), (i) Buyer shall (A) deliver (1) the Cash Purchase Price, plus or minus, the applicable adjustments to the Purchase Price as set forth in Section 3.2(b) below and (2) the XO Common Stock, into escrow as described in Section 3.2, (B) execute and deliver the Operating Agreement and (C) commence operation of the Business under the terms of the executed Operating Agreement, (ii) Seller shall execute and deliver the Operating Agreement and (iii) upon the Early Funding Date, the risk of loss shall transfer to Buyer, and Buyer's obligation to close the transactions contemplated hereby shall become unconditional and irrevocable

### 3.2 Purchase Price

(a) The "Purchase Price" consists of (i) Three Hundred Eleven Million and Two Hundred Thousand Dollars (\$311,200,000.00) (the "Cash Purchase Price"), as such amount is adjusted pursuant to Section 3.2(b), and (ii) 45,380,000 shares of common stock of Buyer, par value \$ 0.1 per share (the "XO Common Stock") (subject to adjustment for stock splits, stock dividends, share exchanges, recapitalizations, share combinations and reorganizations and other similar transactions occurring after the date hereof)

(b) In the event of an Early Funding Date, Buyer shall (i) wire transfer the sum of:

- (1) the Cash Purchase Price, plus or minus
- (2) the Initial Working Capital Adjustment (if any) set forth in Section 3.4(f), minus
- (3) the Adjustment Escrow Amount, minus
- (4) the Earnest Money Deposit, minus
- (5) the portion of the Performance Adjustment Amount that is to be settled in cash (if any) as determined in accordance with Section 3.6(a), plus
- (6) the Deposit Adjustment Amount (if any), plus
- (7) the Non-ILEC Cure Adjustment set forth in Section 3.5(c) (the Cash Purchase Price, as so adjusted is referred to herein as the "Adjusted Cash Purchase Price") and

(ii) deliver 45,380,000 shares of XO Common Stock (subject to adjustment for stock splits, stock dividends, share exchanges, recapitalizations, share

combinations and reorganizations and other similar transactions occurring after the date hereof) (the Purchase Price Escrow Stock and together with the Adjusted Cash Purchase Price, the "Purchase Price Escrow"), in each case into an escrow account (the "Purchase Price Escrow Account") with a bank to be mutually agreed upon to act as escrow agent (the "Purchase Price Escrow Agent") pursuant to an escrow agreement, to be entered into on the Early Funding Date (the "Purchase Price Escrow Agreement"), among ATI, ATCW, Buyer and the Purchase Price Escrow Agent, substantially in the form of Exhibit F-1 hereto, and otherwise in form and substance reasonably acceptable to ATI, ATCW and Buyer. After the Early Funding Date and until the Closing Date, Buyer shall make additional deposits of common stock of Buyer in the event of any stock splits, stock dividends, share exchanges, recapitalizations, share combinations and reorganizations and other similar transactions occurring after the Early Funding Date.

(ii) wire transfer the Adjustment Escrow Amount into an escrow account (the "Adjustment Escrow Account") with a bank to be mutually agreed upon to act as escrow agent (the "Adjustment Escrow Agent") pursuant to an escrow agreement, to be entered into on the Early Funding Date (the "Adjustment Escrow Agreement"), among ATI, ATCW, Buyer and the Adjustment Escrow Agent, substantially in the form of Exhibit F-2 hereto, and otherwise in form and substance reasonably acceptable to ATI, ATCW and Buyer.

Any payment Sellers are obligated to make to Buyer pursuant to Sections 3.4 and/or 3.6 shall be paid from the Adjustment Escrow Amount plus accrued interest thereon. After payment of any required amounts pursuant to Sections 3.4 and 3.6, the Adjustment Escrow Agent shall release the residual amounts of the Adjustment Escrow Amount remaining in the Adjustment Escrow Account to ATI. Notwithstanding the provisions of this Section 3.2(b), in the event the Closing occurs before the Early Funding Date, the Closing Date shall be substituted for the Early Funding Date for all purposes and for all of the provisions of this Section 3.2(b).

(c) Upon the Closing Date, (i) Buyer shall, subject to the terms and conditions of this Agreement, assume the Assumed Liabilities, and (ii) Buyer and Sellers shall deliver a joint written notice to the Purchase Price Escrow Agent directing the Purchase Price Escrow Agent to pay to ATI (on behalf of Sellers) by wire transfer of immediately available funds to an account or accounts designated by ATI (on behalf of Sellers) the Adjusted Cash Purchase Price and the Earnest Money Deposit, to deliver to ATI (on behalf of Sellers) the Purchase Price Escrow Stock and deliver to Buyer all earnings accrued thereon in the Purchase Price Escrow Account.

3.3 Earnest Money Deposit On February 9, 2004, Buyer paid an earnest money deposit equal to Thirty Million Dollars (\$30,000,000) (the "Earnest Money Deposit") in immediately available funds, by wire transfer to ATI. Within five (5) Business Days following the execution of this Agreement, Sellers will deposit the Earnest Money Deposit into the Purchase Price Escrow Account. At the Early Funding Date, the Earnest Money Deposit shall be deducted from the Cash Purchase Price in accordance with Section 3.2(b). If Buyer terminates this Agreement in breach of Section 8.1 hereof or if ATI terminates this Agreement pursuant to Section 8.1(b) (when Buyer

does not have the right to terminate this Agreement pursuant to Section 8.1(b) due to breach of the Agreement by Buyer) or Section 8.1(d) pursuant to a breach by Buyer, then Buyer and Sellers shall within two (2) Business Days of such termination (i) deliver a joint written notice to the Purchase Price Escrow Agent to deliver the Earnest Money Deposit to Sellers and (ii) deliver the accrued interest thereon to Buyer, by wire transfer of immediately available funds and Sellers shall have no further obligations to Buyer. provided, that in no event shall the payment of the Earnest Money Deposit limit any other remedies Sellers may have against Buyer in the event of any such termination. If this Agreement is terminated for any other reason, then Buyer and Sellers shall within two (2) Business Days of such termination deliver a joint written notice to the Purchase Price Escrow Agent to deliver the Earnest Money Deposit plus accrued interest thereon to Buyer by wire transfer of immediately available funds

#### 3.4 Working Capital Purchase Price Adjustment.

(a) Not less than five (5) Business Days prior to the Early Funding Date, Sellers will prepare and deliver to Buyer a good faith estimate of the Net Working Capital as of the close of business on the day immediately preceding the Early Funding Date (the "Estimated Early Funding Date Working Capital") Sellers will prepare the Estimated Closing Working Capital in accordance with GAAP and consistent with ATI's preparation of its unaudited balance sheet as of September 30, 2003.

(b) As promptly as practicable, but no later than sixty (60) Business Days after the Early Funding Date, Buyer will prepare and deliver to ATI a good faith calculation of Net Working Capital as of the Early Funding Date (the "Early Funding Date Working Capital") Buyer will prepare the Early Funding Date Working Capital in accordance with GAAP and consistent with ATI's preparation of its unaudited balance sheet as of September 30, 2003. Attached as Exhibit G is a schedule showing the calculation of Base Working Capital

(c) If Sellers disagree with Buyer's calculation of Early Funding Date Working Capital, Sellers may, within fifteen (15) Business Days after delivery by Buyer of the statement pursuant to Section 3.4(b), deliver a notice to Buyer disagreeing with such calculation and setting forth Sellers' calculation of such amount. Any such notice of disagreement shall specify those items or amounts as to which Sellers disagree, and Sellers shall be deemed to have agreed with all other items and amounts contained in the calculation of the Early Funding Date Working Capital. If Sellers do not raise any objections to the Early Funding Date Working Capital within the period described herein, the Early Funding Date Working Capital will become final and binding upon Buyer and Sellers

(d) If a notice of disagreement shall be duly delivered pursuant to Section 3.4(c), Buyer and Sellers shall, during the fifteen (15) days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of Early Funding Date Working Capital. If during such period, Buyer and Sellers are unable to reach such agreement, they shall promptly thereafter cause representatives from the

Dallas office of Ernst & Young LLP (or, if the Dallas office of Ernst & Young LLP is not independent of Buyer and Sellers, then an alternative "Big Four" accounting firm mutually agreeable to Buyer and Sellers) which representatives have not been engaged or employed within the past five (5) years by Buyer, Sellers or any of their Affiliates (or, if Sellers and Buyer agree to another nationally recognized independent accounting firm such other firm) (the "Accounting Referee") to review this Agreement and the disputed items or amounts for the purpose of calculating Early Funding Date Working Capital (it being understood that in making such calculation, the Accounting Referee shall be functioning as an expert and not as an arbitrator). In making such calculation, the Accounting Referee shall consider only those items or amounts as to which the parties have disagreed. The Accounting Referee shall deliver to Buyer and Sellers, as promptly as practicable (but in any case no later than thirty (30) days from the date of engagement of the Accounting Referee), a report setting forth such calculation. Such report shall be final and binding upon Buyer and Sellers. The cost of such review and report shall be borne by Buyer and Sellers in the reverse proportion that the aggregate dollar amounts of disputed items which are resolved in favor of Buyer or Sellers (as applicable) bears to the aggregate dollar amount of all disputed items resolved by the Accounting Referee.

(e) Buyer and Sellers shall, and shall cause their respective Representatives to, cooperate and assist in the calculation of Early Funding Date Working Capital and in the conduct of the review referred to in Section 3.4(d), including providing reasonable and timely access to the books, records, work papers and personnel involved in preparing these calculations.

(f) If Estimated Early Funding Date Working Capital (i) exceeds Base Working Capital, then at the Early Funding Date, Buyer shall pay into the Adjustment Escrow Account an additional amount of cash equal to such excess or (ii) is less than Base Working Capital, then the Cash Purchase Price will be reduced by an amount equal to such deficiency. Any adjustment pursuant to this Section 3.4(f) is referred to herein as the "Initial Working Capital Adjustment."

(g) If Final Working Capital equals Estimated Early Funding Date Working Capital, and if no further payments are or may become due pursuant to Section 3.6 hereof, then within three (3) Business Days of the later of the Closing Date or the final determination of such amount pursuant to this Section 3.4, Buyer and Sellers shall deliver a joint written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the Adjustment Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Sellers.

(h) If Final Working Capital exceeds Estimated Early Funding Date Working Capital, then within three (3) Business Days of the later of the Closing Date or the final determination of such amount pursuant to this Section 3.4, Buyer shall pay such amount (by wire transfer of immediately available funds) to Sellers and, if no further payments are or may become due pursuant to Section 3.6 hereof, Buyer and Sellers shall deliver a written notice to the Adjustment Escrow Agent pursuant to the



Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the Adjustment Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Sellers

(i) If Final Working Capital is less than Estimated Working Capital, then within three (3) Business Days of the later of the Closing Date or the final determination of such amount pursuant to this Section 3.4, Sellers and Buyer shall deliver a written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay such deficit amount plus the accrued interest thereon out of the Adjustment Escrow Account (by wire transfer of immediately available funds) to Buyer, provided that the Adjustment Escrow Account shall be the sole source of payment for any such deficiency and in no event shall Sellers be otherwise liable for any such deficiency. To the extent any Adjustment Escrow Amount remains after payment of any such deficit, and if no further payments are or may become due pursuant to Section 3.6 hereto, Buyer and Sellers shall deliver a written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the remaining Adjustment Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Sellers. For purposes of this Agreement, "Final Working Capital" means Early Funding Date Working Capital (i) as shown in Buyer's calculation delivered pursuant to Section 3.4(b) if no notice of disagreement with respect thereto is duly delivered pursuant to Section 3.4(c), or (ii) if such a notice of disagreement is delivered, (A) as agreed by Buyer and Sellers pursuant to Section 3.4(d) or (B) in the absence of such agreement, as shown in the Accounting Referee's calculation delivered pursuant to Section 3.4(d)

(j) Any adjustment under this Section 3.4 shall be treated as an adjustment to the Purchase Price for federal, state and local income Tax purposes.

### 3.5 Cure Price Adjustment

(a) The Cure Amounts, if any, as determined by the Bankruptcy Court, necessary to cure all defaults, if any, under Allegiance's interconnection agreements with incumbent local exchange carriers ("ILECs"), together with any other payments made to settle pre-Petition disputes between any of Sellers or the Operating Subsidiaries and ILECs under such agreements, under tariffs or otherwise after the date hereof (the "ILEC Cure Amounts") shall be resolved in accordance with this Section 3.5(a). Buyer and Sellers shall work cooperatively and in good faith with respect to paying, objecting to and settling the ILEC Cure Amounts, it being understood that all pre-Petition accounts receivable of Sellers or the Operating Subsidiaries owed by ILECs (the "ILEC Set Off Amounts") shall be set off against the ILEC Cure Amounts and thereby used as currency to pay the ILEC Cure Amounts. Sellers shall pay all ILEC Cure Amounts (whether in cash or by application of the ILEC Set Off Amounts). Buyer and Sellers agree that subject to this Section 3.5(a), Buyer should have standing in the Cases with regard to ILEC Cure Amounts and the parties shall take such position in the Cases.

Notwithstanding anything herein to the contrary (including Section 6.1(k)), prior to the Sale Order Approval Date, as between Buyer and Sellers, Sellers shall have sole control over their business relationships, including without limitation, the exclusive right to negotiate and settle with the ILECs, and shall be permitted to terminate, adopt and amend interconnection agreements but shall not prior to such time settle any ILEC Cure Amounts in a manner which would be injurious in any material respect to Buyer without Buyer's consent (which will not be unreasonably withheld) or take any action (including as specified above) if the intent or reasonably anticipated consequence thereof is or would be to injure in any material respect to Buyer's continuing relationship with such ILEC after the Closing Date. Buyer shall be permitted to participate in any such negotiations and shall be kept reasonably informed by Sellers of the process.

(b) If deposits are required by ILECs in connection with establishing new interconnection agreements for the Business between the date hereof and the Early Funding Date and such deposits are outstanding at the time of the Early Funding Date, the Cash Purchase Price shall be increased by an amount (the "Deposit Adjustment Amount") equal to seventy-five percent (75%) of the first \$13 million of such deposits and one hundred percent (100%) of the deposits above \$13 million.

(c) The Cure Amounts, if any, as determined by the Bankruptcy Court, necessary to cure all defaults, if any, under the Assumed Contracts, other than the ILEC Cure Amounts (the "Non-ILEC Cure Amounts") shall be resolved in accordance with this Section 3.5(c). Buyer and Sellers shall work cooperatively and in good faith with respect to paying, objecting to and settling the Non-ILEC Cure Amounts, it being understood that all pre-Petition accounts receivable of Sellers and the Operating Subsidiaries owed by non-ILECs (the "Non-ILEC Set Off Amounts") shall be set off against the Non-ILEC Cure Amounts and thereby used as currency to pay the Non-ILEC Cure Amounts. Buyer and Sellers agree that given this Section 3.5(c), Buyer should have standing in the Cases with regard to Non-ILEC Cure Amounts and the parties shall take such position in the Cases. The treatment of the Non-ILEC Cure Amounts and all matters related thereto under the Bankruptcy Plan shall be reasonably acceptable to Buyer. Sellers shall pay all Non-ILEC Cure Amounts (whether in cash or by application of the Non-ILEC Set Off Amounts), provided that if the Non-ILEC Cure Amounts are more than \$11 million, the Cash Purchase Price shall be increased by an amount equal to the lesser of (A) two-thirds of the amount by which the Non-ILEC Cure Amounts exceed \$11 million and (B) \$8 million.

The adjustment to the Cash Purchase Price pursuant to this Section 3.5(c) is referred to herein as the "Non-ILEC Cure Adjustment." If as of the time of the Early Funding Date any reserves are established with respect to disputed Non-ILEC Cure Amounts pending resolution of such disputes, the Purchase Price adjustment provided in this Section 3.5(c) shall be made, with respect to the agreed Non-ILEC Cure Amounts, at the Early Funding Date, and with respect to any such reserved amounts, within two (2) Business Days following the resolution of the disputes.

(d) Subject to Section 8.3, (i) on February 13, 2004, Buyer designated the (A) Real Property Leases identified on Schedule 4.21 of the Disclosure

### 3.6 Performance Price Adjustment

(b) If Buyer disagrees with the certificate delivered by ATI pursuant to Section 3.6(a) hereof, Buyer may, within thirty (30) days after Early Funding Date, deliver a notice to ATI disagreeing with the calculations contained in such certificate

and setting forth Buyer's calculations. Any such notice of disagreement shall specify those items or amounts as to which Buyer disagrees, and Buyer shall be deemed to have agreed with all other items and amounts contained in the calculation of the Performance Adjustment Amount. If Buyer does not raise any objections to the Performance Adjustment Amount within the period described herein, the Performance Adjustment Amount will become final and binding upon Buyer and Sellers (the "Final Performance Adjustment Amount"). In such event, if no further payments are or may become due pursuant to Section 3.4 hereof, ATI, ATCW and Buyer shall deliver a written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the Adjustment Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to ATI.

(c) If a notice of disagreement shall be duly delivered pursuant to Section 3.6(b), Buyer and Sellers shall, during the five (5) days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the Final Performance Adjustment Amount. If during such period, Buyer and Sellers are unable to reach such agreement, they shall promptly thereafter cause the Accounting Referee to review the disputed items or amounts for the purpose of calculating the Final Performance Adjustment Amount (it being understood that in making such calculation, the Accounting Referee shall be functioning as an expert and not as an arbitrator). In making such calculation, the Accounting Referee shall consider only those items or amounts as to which the parties have disagreed. The Accounting Referee shall deliver to Buyer and Sellers, as promptly as practicable (but in any case no later than fifteen (15) days from the date of engagement of the Accounting Referee), a report setting forth such calculation. Such report shall be final and binding upon Buyer and Sellers. The cost of such review and report shall be borne by Buyer and Sellers in the reverse proportion that the aggregate dollar amounts of disputed items which are resolved in favor of Buyer or Sellers (as applicable) bears to the aggregate dollar amount of all disputed items resolved by the Accounting Referee.

(d) If the parties hereto agree, or the Accounting Referee determines, that the Final Performance Adjustment Amount is greater (the "Additional Amount") than the amount set forth in ATI's certificate delivered pursuant to Section 3.6(a), then within two (2) Business Days of such determination pursuant to this Section 3.6, Buyer and Sellers shall deliver a written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the Additional Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Buyer, and, if no further payments are or may become due pursuant to Section 3.4 hereof, the balance of the Adjustment Escrow Amount plus the accrued interest thereon to ATI. The Adjustment Escrow Account shall be the sole source of payment for any payment obligation of Sellers pursuant to Section 3.6.

3.7 Allocation of Purchase Price. Buyer shall, within 120 days after the Closing Date, prepare and deliver to Sellers a schedule (the "Allocation Schedule") allocating the Purchase Price and the Assumed Liabilities among the Acquired Assets in

accordance with Treasury Regulation Section 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. ATI may propose to Buyer specific changes in the Allocation Schedule within ten (10) days of the receipt thereof. If no such changes are proposed in writing to Buyer within such time, Sellers will be deemed to have agreed to the Allocation Schedule. If such changes are proposed, Buyer and ATI will negotiate in good faith and will use their best efforts to agree upon the Purchase Price allocation. If Buyer and ATI cannot mutually resolve ATI's reasonable objections to the Allocation Schedule within ten (10) days after Buyer's receipt of such objections, such dispute with respect to the Allocation Schedule shall be presented to the Accounting Referee, on the next day for a decision that shall be rendered by the Accounting Referee within thirty calendar days thereafter and shall be final and binding upon each of the parties. The fees, costs and expenses incurred in connection therewith shall be shared in equal amounts by Buyer, on the one hand, and Sellers, on the other hand. Buyer and Sellers each shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation Schedule, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Sellers shall cooperate in the filing of any forms (including Form 8594) with respect to such allocation. Notwithstanding any other provisions of this Agreement, the foregoing agreement shall survive the Closing Date.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby, jointly and severally, represent and warrant to Buyer that as of December 18, 2003 (unless another date is specified):

4.1 Existence, Good Standing and Power. Each Seller and Operating Subsidiary is a corporation validly existing and in good standing under the laws of the state of its incorporation, and has all requisite power and authority to own, lease and operate the Acquired Assets to be sold hereunder and to carry on its business as presently conducted. Each Seller and Operating Subsidiary is qualified or licensed to do business as a foreign corporation and is in good standing in every jurisdiction where the nature of the business conducted by it or the properties owned or leased by it requires qualification, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to have a Material Adverse Effect. Each Seller has all requisite power and authority (a) to execute and deliver this Agreement and the other Transaction Documents and (b) subject to entry of the Sale Order, to perform its obligations hereunder and thereunder.

4.2 Authority. The execution, delivery and performance of this Agreement and the other Transaction Documents by each Seller, the performance of Sections 6.17(a) and 6.17(b) by each Seller, and subject to entry of the Sale Order, the performance by each Seller of its other obligations hereunder and thereunder and the consummation by each Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of each Seller.

4.3 Execution and Binding Effect. This Agreement has been and each of the other Transaction Documents has been or will be at Closing, duly and validly executed and delivered by each Seller and constitutes, and, following the entering of the Sale Order, this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby will constitute (assuming in each case the due and valid authorization, execution and delivery thereof by the other parties hereto and thereto), a valid and legally binding obligation of such Seller enforceable against such Seller in accordance with its terms.

4.4 No Violation. Except as disclosed in Schedule 4.4 of the Disclosure Schedules, the execution, delivery and performance by each Seller of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, do not and will not conflict with or result in, with or without the giving of notice or lapse of time or both, any violation of or constitute a breach or default, or give rise to the creation of a Lien upon any of the Acquired Assets (or the assets of the Operating Subsidiaries) or to any right of acceleration, payment, amendment, cancellation or termination, under (a) the certificate of incorporation or bylaws of any Seller or any Operating Subsidiary or any resolution adopted by the board of directors of such Seller or any Operating Subsidiary and not rescinded, (b) subject to entry of the Sale Order, any agreement or other instrument to which any Seller or Operating Subsidiary is a party or by which such Seller or Operating Subsidiary or any of its respective properties or assets is bound, (c) subject to entry of the Sale Order, any Order of any Governmental Entity to which any Seller or any Operating Subsidiary is bound or subject, or (d) subject to entry of the Sale Order, any Law applicable to or binding on any Seller or any of its respective properties or assets or any Operating Subsidiary, except, in the case of clauses (b), (c) and (d) of this Section 4.4, to the extent such conflict, violation, breach, default, creation of Lien or right would not be reasonably expected to have a Material Adverse Effect.

4.5 Third Party Approvals. Except for (a) any approvals required in order to comply with the provisions of the HSR Act, (b) any FCC Consent and State PUC Consent as required by applicable Law, (c) the Sale Order and (d) any other third party approvals as are reflected on Schedule 4.5 of the Disclosure Schedules hereto, including with respect to any computer software program and databases, the execution, delivery and performance by Sellers of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, do not require any consents, waivers, authorizations or approvals of, or filings with, any third Persons which are both material to the Business and which have not been obtained by Sellers.

#### 4.6 Financial Statements.

(a) ATI has delivered to Buyer copies of (i) the audited consolidated balance sheets of ATI and its Subsidiaries as of December 31, 2002 and 2001 and the related audited consolidated statements of income and of cash flows of ATI and its Subsidiaries for the years then ended and (ii) the unaudited consolidated balance sheets of ATI and its Subsidiaries as at September 30, 2003 and the related consolidated statements of income and cash flows of ATI and its Subsidiaries for the nine (9) month

period then ended (such audited and unaudited statements, including the related notes and schedules thereto, are referred to herein as the "Financial Statements") Each of the Financial Statements has been prepared in accordance with GAAP consistently applied throughout the periods presented and presents fairly in all material respects the consolidated financial position, results of operations and cash flows of ATI and its Subsidiaries as at the dates and for the periods indicated

For the purposes hereof, the audited consolidated balance sheet of ATI and its Subsidiaries as at December 31, 2002 is referred to as the "Balance Sheet" and December 31, 2002 is referred to as the "Balance Sheet Date "

(b) ATI has delivered or made available to Buyer copies of each of Sellers' and each Operating Subsidiaries' (i) post-Petition monthly latest flash reports and (ii) post-Petition monthly operating reports that Sellers' and the Operating Subsidiaries have filed with the Bankruptcy Court To Sellers' Knowledge, each such monthly operating report is, and each monthly operating report to be filed with the Bankruptcy Court will be, complete, accurate and truthful. Each flash report to be delivered to Buyer pursuant to Section 6 5(d) hereof will be prepared in good faith consistent with past practice and based on the Sellers' preliminary books and records

(c) Seller has made all required filings with the U.S. Securities and Exchange Commission (the "SEC") since December 31, 2001 As of their respective dates of filing, all such filings complied as to form in all material respects with the requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations of the SEC promulgated thereunder applicable to such SEC filings, and such SEC filings did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading

4.7 No Undisclosed Liabilities Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, Allegiance has no indebtedness, obligation or Liability of any kind (whether accrued, absolute, contingent or otherwise, and whether due or to become due), that would have been required to be reflected in, reserved against or otherwise described on a balance sheet of a Seller or Operating Subsidiary or in the notes thereto in accordance with GAAP which (i) is not shown or described on the Balance Sheet or the other Financial Statements or the notes thereto, (ii) is not shown or described on Schedules 4.7, 4 9, 4 17(b) and 4.20 of the Disclosure Schedules or (iii) was not incurred in the Ordinary Course of Business since the Balance Sheet Date.

4.8 Title to Acquired Assets; Sufficiency. Except as set forth on Schedule 4 8 of the Disclosure Schedules, Sellers own and have good title to each of the Acquired Assets (and the assets of the Operating Subsidiaries to the extent such assets are not Excluded Assets), including the capital stock of the Operating Subsidiaries, and the Operating Subsidiaries own and have good title to their assets other than the Excluded Assets, in each case free and clear of all Liens other than Permitted Liens. The Acquired

Assets constitute all of the assets and properties used in or held for use in the Business (other than the Excluded Assets) and are sufficient for Buyer to conduct the Business (other than the Excluded Assets) from and immediately after the Closing Date without interruption and in the Ordinary Course of Business

4.9 Communications Licenses Sellers and the Operating Subsidiaries are the authorized legal holders or otherwise have rights to the Communications Licenses, which licenses constitute all of the material Licenses, from the FCC or the State PUCs that are necessary or required for and/or used in the operation of the Business as presently operated. All the Communications Licenses were duly obtained and are valid and in full force and effect, unimpaired by any condition, except those conditions that may be contained within the terms of such Communications Licenses which would not have a Material Adverse Effect on the Business as presently operated. Except as set forth on Schedule 4.9 of the Disclosure Schedules, Sellers are in compliance in all material respects with the Communications Act of 1934 as amended, and the rules, regulations and policies of the FCC and all applicable State PUCs. There is not now pending or, to Sellers' Knowledge, threatened, any action by or before the FCC or any State PUC in which the requested remedy is the revocation, suspension, cancellation, rescission or modification of any of the Communications Licenses. Schedule 2.1(d) of the Disclosure Schedules contains a complete and correct list of Sellers' Communications Licenses.

4.10 Absence of Certain Developments Except as expressly contemplated by this Agreement or the Operational Restructuring Activities, as set forth on Schedule 4.10 of the Disclosure Schedules or in connection with the filing of the Cases, from the Balance Sheet Date through December 18, 2003 Sellers have conducted the Business only in the Ordinary Course of Business.

4.11 Tangible Personal Property All items of tangible personal property which are Acquired Assets and which, individually or in the aggregate, are material to the operation of the Business are in good condition and in a state of good maintenance and repair (ordinary wear and tear excepted) and are suitable for the purposes used.

4.12 Insurance. Allegiance has insurance policies in full force and effect for such amounts as are sufficient for all requirements of Law and the Credit and Guaranty Agreement dated as of February 15, 2000 among Allegiance and the lenders party thereto (the "Senior Credit Agreement").

4.13 Accounts and Notes Receivable and Payable.

(a) All accounts and notes receivable of Sellers and the Operating Subsidiaries have arisen from bona fide transactions in the Ordinary Course of Business, and in the case of accounts and notes receivable that are not Excluded Assets, are payable on ordinary trade terms and are reflected on the books and records of Sellers and the Operating Subsidiaries in accordance with GAAP consistently applied, including reserves for returns and doubtful accounts.



(b) All accounts payable of Sellers and the Operating Subsidiaries reflected in the Balance Sheet or arising after the date thereof are the result of bona fide transactions in the Ordinary Course of Business and have been paid, are not yet due and payable or are being disputed in good faith and are reflected on the books and records of Sellers and the Operating Subsidiaries in accordance with GAAP consistently applied

#### 4.14 Related Party Transactions

(a) Except as set forth in Schedule 4.14(a) of the Disclosure Schedules, none of Sellers, any Affiliate of any Seller or any of their respective directors and officers with a title of Senior Vice President or higher (i) owns any direct or indirect material interest of any kind in, or controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has a material right to participate in the profits of, any Person which is (A) a competitor, supplier, customer, landlord, tenant, of any Seller or Operating Subsidiary, (B) engaged in a business related to the Business, or (C) a participant in any transaction (including a loan transaction, other than employee advances in the Ordinary Course of Business) to which any Seller or Operating Subsidiary is a party or (ii) is a party to any Contract with any Seller or any Operating Subsidiary

(b) Except as set forth in Schedule 4.14(b) of the Disclosure Schedules, each Contract, agreement, or arrangement between any Seller or Operating Subsidiary on the one hand, and any Affiliate of any Seller or Operating Subsidiary or any director of any Seller or any officer of Sellers with a title of Senior Vice President or higher on the other hand, is on commercially reasonable terms no more favorable to the Affiliate, director, officer or employee of such Seller or Operating Subsidiary than what any third party negotiating on an arms-length basis would expect

4.15 Suppliers Set forth on Schedule 4.15 of the Disclosure Schedules is a complete and accurate list of (a) the ten (10) most significant equipment suppliers and (b) the ten (10) most significant maintenance suppliers (based upon dollars billed to Allegiance) during the quarter ended September 30, 2003, showing the approximate total billings to Allegiance from each such supplier during such quarter. Except as set forth on Schedule 4.15 of the Disclosure Schedules, since September 30, 2003, there has not been any (i) termination, cancellation or curtailment of the business relationship of any Seller or Operating Subsidiary, as applicable, with any of the suppliers set forth on Schedule 4.15 of the Disclosure Schedules or (ii) written notice from any of the suppliers set forth on Schedule 4.15 of the Disclosure Schedules of an intent or request to so terminate, cancel, curtail or change, and, to Sellers' Knowledge, no written threat or written indication that any such termination, cancellation, curtailment or change is reasonably foreseeable, except, in each case, for such termination, cancellation, curtailment or change which would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

4.16 Fees and Expenses Sellers have engaged the firm of Greenhill & Co., LLC to assist them in connection with the matters contemplated by this Agreement and will be responsible for the fees and expenses of such firm. Other than as described in

the preceding sentence or as is payable by Sellers or their Affiliates and not by Buyer, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement, based upon arrangements made by or on behalf of any Seller or any of their respective Affiliates

#### 4.17 Compliance With Laws, Licenses

(a) Except as set forth on Schedule 4.17(a) of the Disclosure Schedules, since December 31, 2002 (i) Allegiance has complied in all material respects with all Laws relating to the operation of the Business, and (ii) no Seller or Operating Subsidiary has received any written or other notice of or been charged with the violation of any Laws. To Sellers' Knowledge, no Seller or Operating Subsidiary is under investigation with respect to any material violation of any Laws.

(b) Schedule 4.17(b) of the Disclosure Schedules contains a list of all material Licenses (other than Communications Licenses) which are required for the operation of the Business as presently conducted and as presently intended to be conducted. Except as set forth on Schedule 4.17(b) of the Disclosure Schedules, Allegiance currently has all such material Licenses which are required for the operation of the Business as presently conducted. No Seller or Operating Subsidiary is in default or violation, and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation, in any material respect of any term, condition or provision of such License to which it is a party, to which the Business is subject or by which its properties or assets are bound other than any such violation that would not reasonably be expected to have a Material Adverse Effect.

4.18 Environmental Matters. To Sellers' Knowledge, except as described on the attached Schedule 4.18 of the Disclosure Schedules:

(a) Each Seller and Operating Subsidiary and the operations of each Seller and Operating Subsidiary are in compliance with all applicable Environmental Laws, except to the extent such noncompliance would not reasonably be expected to have a Material Adverse Effect.

(b) No Seller or Operating Subsidiary is the subject of any Order or has received any written notice of any violations or Liabilities, including any investigatory, remedial or corrective obligations, arising under Environmental Laws and relating to the operation of the Business, except notices of such violation or Liability which would not reasonably be expected to have a Material Adverse Effect.

4.19 Intellectual Property. Schedule 4.19 of the Disclosure Schedules contains an accurate and complete list of all Intellectual Property owned by any Seller or Operating Subsidiary, other than unregistered trademarks, tradenames and copyrights, none of which is material to the operation of the Acquired Assets. Except as set forth in Schedule 4.19 of the Disclosure Schedules, there is no pending, or to Sellers' Knowledge, threatened claims or Litigation of any nature materially affecting or relating to the

Intellectual Property Schedule 4.19 of the Disclosure Schedules lists all written notices or written claims currently pending or received by any Seller or Operating Subsidiary that claim infringement of any material domestic or foreign letters patent, patent applications, patent licenses, software licenses and know-how licenses, trade names, trademark registrations and applications, service marks, copyrights, copyright registrations or applications, trade secrets, technical knowledge, know-how or other confidential proprietary information. Except as set forth on Schedule 4.19 of the Disclosure Schedules, there is, to Sellers' Knowledge, no reasonable basis upon which any claim may be asserted against any Seller or Operating Subsidiary for material infringement or misappropriation of any of the foregoing. None of Sellers, any Operating Subsidiary, or to Sellers' Knowledge, any other Person, is in material default or violation of any Contract pursuant to which any Seller or Operating Subsidiary licenses Intellectual Property for the Business.

4.20 Contracts Except as set forth on Schedule 4.20 of the Disclosure Schedules, Schedule G of Sellers' schedule of assets and liabilities as filed with the Bankruptcy Court contains a list of all pre-Petition material Contracts, including (i) each Executory Contract containing a Non-Compete Covenant, (ii) each Executory Contract related to the purchases or sales of indefeasible rights of use or leases of capacity and (iii) each interconnection agreement with an ILEC. Schedule 4.20 of the Disclosure Schedules sets forth as of December 18, 2003, each material Executory Contract to which any Seller or any Operating Subsidiary is a party and by or to which any Seller, Operating Subsidiary or any of their properties is currently bound or subject or may be bound or subject. True and complete copies of all material Executory Contracts have been delivered or made available to Buyer. All of the Assumed Contracts are valid, binding and enforceable in accordance with their respective terms, except as designated on the attached Schedule 4.20 of the Disclosure Schedules and except as such enforceability may be limited by (i) applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally and (ii) applicable equitable principles (whether considered in a proceeding at law or in equity). Except as set forth on Schedule 4.20 of the Disclosure Schedules, no Seller is, and to Sellers' Knowledge, no other party thereto is, in material default in the performance, observance or fulfillment of any obligation under any Assumed Contract (other than any Cure Amounts to be paid hereunder by Buyer or Sellers, as applicable), and, to Sellers' Knowledge, no event has occurred, which with or without the giving of notice or lapse of time, or both, would constitute a material default thereunder. Except as set forth on Exhibit A of Schedule 4.20 of the Disclosure Schedules, Sellers have not entered into any material post-Petition Contracts (including interconnection agreements).

#### 4.21 Real Property

(a) Schedule 4.21(a) of the Disclosure Schedules lists, all Real Property Leases relating to the operation of the Business to which any Seller or any Operating Subsidiary is a party.

(b) Except as set forth on Schedule 4.21(b) of the Disclosure Schedules, the Real Property Leases constitute all interests in real property used or held

for use as of December 18, 2003 in connection with the Business by Sellers and the Operating Subsidiaries and which are necessary for the continued operation of the Business by Sellers and the Operating Subsidiaries as the Business was conducted as of December 18, 2003

4.22 Taxes Except as described on the attached Schedule 4.22 of the Disclosure Schedules

(a) (i) all income Tax Returns and all other material Tax Returns required to be filed by or on behalf of Sellers, the Operating Subsidiaries or any Affiliated Group have been duly and timely filed with the appropriate Governmental Entity in all material respects, in all jurisdictions in which such Tax Returns are required to be filed (after giving effect to any valid extensions of time in which to make such filings), and all such Tax Returns are true, complete and correct in all material respects, (ii) except as prohibited or stayed by the Bankruptcy Code, all Taxes payable by or on behalf of Sellers, the Operating Subsidiaries or any Affiliated Group have been fully and timely paid or adequately reserved for on Allegiance's Financial Statements (in each case, other than Taxes that, in the aggregate, are not material in amount), and any Taxes not yet due have been adequately accrued in accordance with GAAP, and (iii) no waivers of statutes of limitation have been given or requested with respect to any Tax Return required to be filed by or on behalf of Sellers, the Operating Subsidiaries or any Affiliated Group,

(b) except as prohibited or stayed by the Bankruptcy Code, for all open Tax years all Taxes required to be withheld, collected or deposited by Sellers or the Operating Subsidiaries have been timely withheld, collected and deposited in all material respects and, to the extent required by Law, all such Taxes have been paid when due to the appropriate Governmental Entity and each Seller and Operating Subsidiary is in compliance in all material respects with respect to all withholding and information reporting requirements under all applicable Laws,

(c) no federal, state, local or foreign Tax audits or administrative or judicial Tax proceedings are pending or being conducted with respect to Allegiance, and neither Allegiance nor any predecessor has received from any federal, state, local or foreign Governmental Entity (including jurisdictions where Sellers have not filed a Tax Return) any (A) notice indicating an intent to open an audit or other review, or commence any other administrative or judicial Tax proceeding that is still active, (B) request for information related to Tax matters where the examination or investigation giving rise to such request is still open, or (C) notice of deficiency or proposed adjustments for any amount of Tax proposed, asserted, or assessed by any Governmental Entity that remains unpaid. No written claim has been made by a Governmental Entity in a jurisdiction where such Seller or Operating Subsidiary does not file Tax Returns that such Seller or Operating Subsidiary is or may be subject to taxation by that jurisdiction; and

(d) Buyer and the Acquired Assets will not be bound by a Tax sharing, Tax allocation, Tax indemnity or other similar agreements or arrangements (whether or

not written) with respect to or involving Sellers or the Acquired Assets after the Closing Date

#### 4.23 Employee Benefits, Labor Matters

(a) Schedule 4.23(a) of the Disclosure Schedules sets forth a list of all material "employee benefit plans," as defined in section 3(3) of ERISA (whether or not subject to ERISA) other than a "multiemployer plan," as defined in Section 3(37) of ERISA, and each material cafeteria, material bonus, incentive or deferred compensation, severance, termination, retention, change of control, stock option, stock appreciation, stock purchase, phantom stock or other equity-based, loan, performance or other employee or retiree benefit or compensation plan, program, arrangement, agreement, policy or understanding, whether written or unwritten, under which any Employee or former Employee (including any beneficiaries and dependents thereof) is or may become eligible to participate or derive a benefit and that is or has been maintained, established or contributed to or required to be contributed to by Allegiance ("Employee Benefit Plans"). With respect to each Employee Benefit Plan, a copy of each of the following documents (if applicable) has been provided or made available to Buyer: (i) the most recent plan document for any Employee Benefit Plan covered by ERISA and all amendments thereto, (ii) the most recent summary plan description, (iii) the most recent trust document or any third party funding vehicle (including insurance) and all amendments thereto, (iv) the two most recent Forms 5500 required to have been filed with the IRS and all schedules thereto, and the most recent IRS determination letter. All contributions required to have been made by Allegiance under any Employee Benefit Plan or any applicable Law to any trusts established thereunder or in connection therewith have been made by the due date therefore (including any extensions). The Employee Benefit Plans have been administered in accordance with their terms in all material respects and are in compliance with applicable Law in all material respects. Neither Allegiance nor any trade or business (whether or not incorporated) which is or has ever been under common control, or which is or has ever been treated as a single employer, with Allegiance under Section 414(b), (c), (m) or (o) of the Code ("ERISA Affiliate") have at any time within the last six years, maintained, contributed to, or had any obligation to contribute to, or has any liability (fixed or contingent) with respect to, any "single-employer plan" as defined in Section 4001(a)(15) of ERISA or any plan subject to Sections 4063 or 4064 of ERISA ("multiple employer plan").

(b) Each Employee Benefit Plan intended to be qualified under Section 401(a) of the Code, and the trust (if any) forming a part thereof, is qualified and tax exempt under Code Section 401(a) and 501(a) and has received a favorable determination letter from the IRS as to its qualification under the Code and to the effect that each such trust is exempt from taxation under Section 501(a) of the Code, which determination letter covers the GUST Amendments and to the Knowledge of Sellers, nothing has occurred since the date of such determination letter that could reasonably be expected to adversely affect such qualification or tax-exempt status.

(c) Allegiance does not provide nor is it obligated to provide, any life insurance or health benefits, including prescription drugs (whether or not insured) to any

individual after his or her termination of employment or service with any of the Sellers or the Operating Subsidiaries except as may be required under COBRA and at the expense of the individual or the individual's beneficiary and except as provided under severance agreements. Sellers and their ERISA Affiliates which maintain a "group health plan" within the meaning of Section 5000(b)(1) of the Code have complied in all material respects with the notice and continuation requirements of COBRA and the regulations thereunder and comparable state laws.

(d) Schedule 4.23(d) of the Disclosure Schedules lists each multiemployer plan (as defined in Section 4001(a)(3) of ERISA) to which the Sellers or their ERISA Affiliates are obligated to contribute ("Multiemployer Plan"), and there is no potential liability under any other multiemployer plan to which the Sellers or their ERISA Affiliates are, or within the preceding six (6) years were, obligated to contribute. To Sellers' Knowledge: (i) no condition exists and (ii) no event has occurred with respect to any Multiemployer Plan that presents a material risk of a complete or partial withdrawal of the Sellers or any ERISA Affiliate under subtitle E of Title IV of ERISA and the Sellers and their ERISA Affiliates have not, within the preceding six years, withdrawn in a complete or partial withdrawal from any multiemployer plan or incurred any contingent liability under Section 4204 of ERISA. To the Sellers' Knowledge, no Multiemployer Plan is in "reorganization" or "insolvent."

(e) There are no collective bargaining agreements with any labor union representing Employees. There is no Employee labor strike, dispute, slowdown, or stoppage pending or, to the Sellers' Knowledge, threatened by Employees against Allegiance. To Sellers' Knowledge: (i) no collective bargaining agreement is currently being negotiated and (ii) no organizing effort is currently being made or has been threatened with respect to the Employees. Allegiance is and has been in material compliance with all Laws relating to employment practices, terms and conditions of employment (including termination of employment), wages, hours of work and occupational safety and health, and worker classification and at all times since November 23, 1999, has been in material compliance with the requirements of the Immigration Reform Control Act of 1986. Allegiance is in compliance with WARN and any similar state or local "mass layoff" or "plant closing" Law in all material respects. There is no unfair labor practice complaint pending or, to Sellers' Knowledge, threatened against Allegiance before the National Labor Relations Board.

(f) There is no Assumed Contract covering any person that, individually or collectively, could give rise to the payment of any amount that would constitute an "excess parachute payment" within the meaning the Section 280G of the Internal Revenue Code or any similar provision of foreign, state or local Law.

4.24 Litigation. Except as set forth on Schedule 4.24 of the Disclosure Schedules and for Claims that will be discharged pursuant to the Bankruptcy Court Order

(a) other than the Cases, there is no Litigation pending or, to Sellers' Knowledge, threatened against, relating to or affecting Allegiance or any Subsidiary

with respect to the Business or any of the Acquired Assets which would reasonably be expected (i) to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or (ii) to have a Material Adverse Effect, and

(b) except for Orders of the Bankruptcy Court, there are no Orders outstanding against Allegiance which would reasonably be expected to have a Material Adverse Effect

4.25 Network Facilities Schedule 4.25 of the Disclosure Schedules contains certain information relating to Allegiance's network. Schedule 4.25 of the Disclosure Schedules sets forth: (i) for each segment, the number of fibers, fiber miles owned or leased by Allegiance, route and name of third party provider, if any, and (ii) for Allegiance's IP backbone, route and circuit type (including DS3s, OC3s, OC12s, OC48 and lambda waves). The information provided on Schedule 4.25 of the Disclosure Schedules is accurate and current in all material respects.

4.26 Bank Accounts Schedule 2.1(n) of the Disclosure Schedules contains a true and complete list of all of Allegiance's bank accounts and lock-boxes.

4.27 Subsidiaries Except for ATCW, the Operating Subsidiaries and Shared Technologies, ATI has no Subsidiaries.

4.28 Limitations on Sellers' Representations and Warranties Except for the representations and warranties contained in this Agreement, Sellers make no other express or implied representation or warranty, including, representations or warranties as to the condition of the Acquired Assets, their contents, the income derived or potentially to be derived from the Acquired Assets or the Business and Sellers hereby expressly disclaim all such representations or warranties of any kind or nature, or the expenses incurred or potentially to be incurred in connection with the Acquired Assets or the Business. Sellers are not, and will not be, liable or bound in any manner by express or implied warranties, guarantees, statements, promises, representations or information pertaining to the Acquired Assets or the Business, made or furnished by any Representatives or other person representing or purporting to represent Sellers, unless and to the extent the same is expressly set forth in this Agreement.

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers as follows:

5.1 Existence, Good Standing and Power Buyer is a corporation validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate the property it now owns, leases and operates. Buyer has all requisite power and authority to conduct its business as presently conducted, to execute and deliver this Agreement, the Transaction Documents and to perform its obligations hereunder and thereunder. Buyer is duly authorized, qualified and licensed to transact business as a foreign corporation, and is in good

standing, in every jurisdiction where the nature of its business conducted by it or the properties owned or licensed by it requires qualification, except where that failure would not have a material adverse effect on Buyer or its business, or the consummation of the transactions contemplated by this Agreement

5.2 Authority The execution, delivery and performance of this Agreement and the Transaction Documents to which Buyer is or will be a party and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Buyer

5.3 Execution and Binding Effect This Agreement has been, and each of the Transaction Documents to which Buyer is or will be a party has been or will be at Closing, duly and validly executed and delivered by Buyer and constitutes, and this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby will constitute (assuming, in each case, the due and valid authorization, execution and delivery thereof by the other parties thereto), a valid and legally binding obligation of Buyer, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

5.4 No Violation Except as disclosed in the attached Schedule 5.4 of the Disclosure Schedules, the execution, delivery and performance by Buyer of this Agreement and the Transaction Documents and the transactions contemplated hereby and thereby, do not and will not conflict with or result in, with or without the giving of notice or lapse of time or both, any violation of or constitute a breach or default, or give rise to any right of acceleration, payment, amendment, cancellation or termination, under (a) the certificate of incorporation or bylaws of Buyer or any resolution adopted by the board of directors of Buyer and not rescinded, (b) any agreement or other instrument to which Buyer is a party or by which Buyer or any of its properties or assets is bound, (c) any Order of any Governmental Entity to which Buyer is bound or subject or (d) any Law applicable to or binding on Buyer or any of its properties or assets except, in the case of clauses (b)-(d), for such conflicts, violations, breaches, defaults or creation of rights as would not, individually or in the aggregate, have a material adverse effect on the business of Buyer or the ability of Buyer to consummate the transactions contemplated by this Agreement and each of the Transaction Documents.

5.5 Third Party Approvals Except for (a) any approvals required in order to comply with the provisions of the HSR Act, (b) any FCC Consent and State PUC Consent as required by applicable Law and (c) any other third party approvals as are reflected on the attached Schedule 5.5 of the Disclosure Schedules, the execution, delivery and performance by Buyer of this Agreement and the Transaction Documents and the transactions contemplated hereby and thereby do not require any consents, waivers, authorizations or approvals of, or filings with, any third Persons which have not been obtained by Buyer



5.6 Brokers and Finders No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement, based upon arrangements made by or on behalf of Buyer or any of its Affiliates

5.7 Financing As of the date hereof and as of the Closing Date, Buyer has and will have sufficient unrestricted funds on hand or committed lines of credit to consummate the transactions contemplated by this Agreement (including the payment of all fees and expenses incurred in connection with the transactions contemplated hereunder)

5.8 SEC Filings Buyer has made all required filings with the SEC since December 31, 2001. The Form 10-K filed with the SEC for Buyer's year ended December 31, 2002 and the Form 10-Q filed with the SEC for Buyer's quarter ended September 30, 2003 (the "Form 10-Q"), as of the dates of their respective filings, each complied as to form in all material respects with the requirements of the Exchange Act, and the rules and regulations of the SEC promulgated thereunder applicable to such SEC filing and such SEC filing did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading

5.9 Capitalization The Form 10-Q sets forth the authorized shares of capital stock of the Buyer as of the date hereof and the number of shares of its common stock that were issued and outstanding as of October 28, 2003. The XO Common Stock of Buyer to be delivered at Closing will be validly and legally issued, free and clear of any and all Liens, and will be fully paid and non-assessable

5.10 Limitations on Sellers' Representations and Warranties Buyer acknowledges and agrees that it shall acquire the Acquired Assets "AS IS," "WHERE IS" and "WITH ALL FAULTS" on the Closing Date and after giving effect to the Closing, subject to the terms and conditions of this Agreement

## ARTICLE VI COVENANTS OF THE PARTIES

6.1 Conduct of Business Except for the Operational Restructuring Activities, as expressly contemplated by this Agreement (including the prosecution of the Cases) or as otherwise consented to by Buyer in writing, during the period from the date of this Agreement and continuing until the Early Funding Date, each Seller shall and shall cause each Operating Subsidiary to:

- (a) (i) conduct its business in the Ordinary Course of Business and
- (ii) keep the Acquired Assets intact in accordance with the Ordinary Course of Business and not transfer any of such assets to Shared Technologies;